

REMARKS

The Official Action of June 30, 2003 has been carefully considered and reconsideration of the application as amended is respectfully requested.

The specification has been amended to delete the subject matter to which the Examiner objects on page 2 of the Official Action.

Claim 21 has been amended to remove the bases for the rejections under 35 USC 112 and 35 USC 103, as discussed below. By the amendment, the claim recitations have been limited (a) to foodstuff that, as recited in the claim, have improved properties as a result of the presence of the claimed calcareous residue in the recited amount; and (b) improved properties selected from those described in the specification at, for example, page 3, lines 27-28, and page 5, lines 15-20. New claims 35 and 36 have been added more completely to define the subject matter which Applicants regard as their invention with cancellation of a corresponding number of finally rejected claims. Support for the recitations in claims 35 and 36 appears in Examples 1 and 2 on pages 11-16 of the specification (see, especially, table bridging pages 12-13 and table on the bottom of page 14).

The claims as amended are respectfully considered to remove the basis for the rejection under 35 USC 112, first paragraph. The specification provides sufficient guidance to enable one of skill in the art routinely (i.e., without undue experimentation) to determine those foodstuffs having a recited property or properties that are improved by the addition of the claimed residue. Indeed, one of skill in the art need only test a foodstuff with and without the claimed residue, by, e.g., following

the Examples in the specification, to determine whether an improvement in a recited property results. Under these circumstances, the experimentation required to practice the invention as now claimed cannot be considered to be undue (see MPEP Section 2164.06). For this reason, it is respectfully submitted that the rejection under 35 USC 112, first paragraph has been overcome by the amendments to the claims.

With respect to the rejection of the claims under 35 USC 103(a) as allegedly being unpatentable over Auchincloss, Applicant respectfully notes that, to establish a *prima facie* case of alleged obviousness, the USPTO has the initial burden to show *inter alia* that the prior art reference or references (a) establish a reasonable expectation of success and (b) teach or suggest all of the claim limitations (see MPEP Section 706.02(j)).

With respect to (a) (reasonable expectation of success), it is respectfully submitted that the cited references would not provide one of skill in the art with even a reasonable expectation that a product having the claimed amount of the recited calcareous residue would have an **improvement** in any organoleptic property. In this respect, the specification indicates at, e.g., page 1, second paragraph, that the addition of a calcium source to a product was known to result in **deterioration** in the physical properties of the product. This is shown in some of the Examples in the specification, including Example 1, wherein the addition of 1.07% of the calcium carbonate control adversely affected the properties of the tested foodstuff. None of the cited references provides even a suggestion that the addition of the claimed residue would improve any one of the recited properties. The references, either alone or in combination, thus cannot provide the requisite reasonable expectation of success.

With respect to (b) (teaching of all claim limitations), it is respectfully submitted that the cited references do not show the claimed amounts of the recited calcareous residue. The Examiner has acknowledged this but contends that it would have been obvious to optimize the claimed amounts. However, as discussed above, the prior art believed that the addition of a calcium source to a product would result in a **deterioration** of the recited properties. By contrast, the Examples in the application show that the recited residue is effective in improving the recited properties. In other words, the Examples show that the amount of the recited calcareous residue is a result effective variable. As discussed in MPEP Section 2144.05, it would not have been obvious to optimize a variable which was not recognized to be a result effective variable. Accordingly, it is respectfully submitted that the cited art does not set forth even a *prima facie* case of obviousness for this reason as well.

In view of the above, it is respectfully submitted that all rejections and objections of record have been overcome and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,

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